

Prepared Comments by Senator Pat Roberts
Washington, DC
Examining the Filibuster II
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Thank you, Mr. Chairman, for holding a second hearing on the Senate's rules, procedures, and role in the legislative process.

At the last hearing we detailed the marked decline in open amendment rules in the House, and the soaring increase in closed amendment rules for legislation brought before that body. To whom can the American people turn when the House majority runs roughshod over the minority and the wishes of the public? It is the Senate.

There is a temptation on the part of some members in this Chamber to make the Senate more like the House, to do away with procedures and precedents intended to foster compromise and comity.

Since 2007, there has been an unprecedented rise in parliamentary tactics by the Majority to circumvent regular order. The data is indisputable, and I encourage anyone interested in the subject to witness the trend over the last three and half years that is characterized by an increase in the use of Rule 14 to bypass committee, a decrease in the use of conference committees to resolve legislation, and a drastic rise in the use by the Majority Leader of a tactic called "filling the tree," which prevents the minority from offering amendments. The use of filling the tree by the current Majority Leader is more than double that of the previous leader and is exponentially greater than the norm of the last decade.

Despite these alarming trends, some critics charge the minority with obstruction, and point to the number of cloture motions filed in the last three and a half years as evidence of minority filibustering. The use of cloture, which is an instrument to cut off debate, does not correlate with objections from the Minority. A great many cloture motions, far more than in any previous Congress, are filed the moment the question is raised on the floor. Thus, debate is cut off before it can even begin.

Worse yet, there seems to be a growing inclination to intentionally conflate the term filibuster with "holds." Holds are an informal process by which a Senator submits notice that they object to a unanimous consent request. Typically, a hold is used to prevent a nomination or a piece of legislation from passing the Chamber without a debate or recorded vote. A "hold" does not prevent the Majority Leader from bringing a question to the floor.

In closing, I would like to reiterate that the framers of the Constitution had the foresight to create an institution that was based not on majority rule, but where each state regardless of size had two Senators to speak out on their behalf, to debate, and to offer amendments.

For anyone who doubts that this is what the framers intended, I encourage them to revisit the *Federalist Papers*, No. 10, attributed to James Madison, which states:

“Complaints are everywhere heard... that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.”

Mr. Chairman, the filibuster is an indispensable tool for controlling the effects of partisanship and factionalism because it compels the Majority to meet the Minority, and the American people, in the center in order to forge national policies based on consensus instead of discord.

Thank you.